



Republican Policy Committee

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Justice Delayed: The Nebraska Experience

Why are there such long delays between the imposition of a capital sentence and the carrying out of that sentence? The answer is, the federal courts. Two Nebraska examples illustrate the point:

Still Waiting. More Than 20 Years After the Murders

Michael Anderson and Peter Hochstein were convicted in 1975 of the contract killing of Ronald J. Abboud. Their cases had been pending in the United States District Court for the District of Nebraska for more than 10 years when, in May 1994, Nebraska Attorney General, Don Stenberg, took the extraordinary step of asking the 8th Circuit Court of Appeals to compel the district court to resolve the cases promptly. However, the 8th Circuit denied the request within weeks, leaving the cases to languish in the district court. In June 1995, Nebraska's request for mandamus was renewed. On July 8, 1996, the 8th Circuit ordered the District Court to resolve the case.

Finally, in January 1996, the district court acted by sending the cases back to the Nebraska Supreme Court — and both sides have said they will appeal to the 8th Circuit. More than 20 years after the convictions, and the appeals and cross appeals are just restarting!

16 Years for a Confessed Murderer and Rapist

The only execution carried out in the State of Nebraska in the last 35 years occurred in September 1994. The defendant had been convicted of the murder, rape, and robbery of Jane McManus 16 years earlier. *There was no doubt of his guilt: he gave a detailed confession.*

The following account of Miss McManus's murder is taken from an opinion of the Nebraska Supreme Court. It is gruesome, but less so here than in the opinion itself.

The defendant entered the McManus apartment and was confronted by the victim. He told her he was going to rob her. She said she didn't have much money. The defendant then announced that he was going to rape her. As he began his assault, Miss McManus fought back, but the assailant knocked her back onto a sofa and slashed her across the forehead to show, as he said, that "he wasn't kidding." Cut and bleeding, Miss McManus stopped fighting back. The defendant then raped and sodomized her. When the sexual assaults were completed, the defendant asked again for money. The victim said she had a little bit upstairs, and the defendant forced her upstairs. Unclothed and bleeding badly from the cut on her forehead, she left a trail of blood on the stairs. After the victim had surrendered her money, the defendant started to stab

her. "I figured," said the defendant in his confession, "well, it went that far, why not, so, I stabbed her or whatever." The pathologist found at least 15 major stab wounds and lacerations on the body and many small lacerations on the hands and abdomen. The killer then took a hammer from the top of the victim's dresser and smashed her head four or five times. He then strangled her with a belt he found on the bed. Miss McManus's body was so badly brutalized that the murderer covered her up because, as he said, he "couldn't stand the sight."

Despite the brutality of the crime and the unquestionable guilt of the defendant, 16 years were consumed in the courts. The murderer was sentenced in 1978, but the sentence was not carried out until 1994. Of those 16 years, 11 years were consumed by the federal courts.

Delay Means Victory for Murderers

The problem is not that the federal judges in Nebraska are too busy to attend to these cases. Nebraska has 11 men on death row, but it has four federal district court judges, a senior district judge, and three federal magistrates. If all these cases were before the United States District Court at once, on average, the federal district judges in Nebraska would have only two capital cases to attend to.

The essence of the problem is this: Every day that passes without a capital sentence being carried out is a victory for the murderer and his legal counsel. The objective of defense counsel in most capital cases is delay . . . delay . . . delay.

Congress Must Act To Restore Justice

The people of the majority of states, through their elected representatives, have chosen to execute mass murderers, contract killers, those who repeatedly abduct and murder young children, those who torture their victims before killing them, and similar criminals. The constitutionality of these laws has been upheld by the United States Supreme Court. However, the carrying out of these constitutional, capital punishment laws is being hindered and delayed for years, and in some cases for a decade or more, by some elements of the federal judiciary. The solution to this problem must come from the Congress of the United States.

Staff Contact: Lincoln Oliphant, 224-2946 [This document is an edited version of the March 1995 testimony to the Senate Judiciary Committee of the Attorney General of Nebraska, the Honorable Don Stenberg. It has been updated to show developments in 1996.]

Note: This paper is one in a series of RPC papers on habeas corpus reform. Among those papers are the following, which may be obtained by contacting the Policy Committee.

1. "Justice Delayed — For Generations," May 23, 1995 [overview of statistics]
2. "Mass Murder in Oklahoma — 17 Years Later," May 23, 1995 [Oklahoma mass murders]
3. "Murderer of Two Boys Filed Habeas Petitions for 10 Years," June 5, 1995 [California]
4. "Victim's Family Waits 17 Years for Justice," June 5, 1995 [Virginia]
5. "Federal Habeas Corpus Procedures Need Reform," June 5, 1995 [Wm. F. Smith criticism]
6. "14 Years Later, His Appeals Still Thrive," June 6, 1995 [Idaho]
7. "Murderer Executed 14 Years After Conviction," June 6, 1995 [Pennsylvania]